

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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SDMS Document



99377

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE TOWN OF OYSTER BAY,

Defendant.

CIVIL ACTION NO.

SPATT, J.

CV-90-4183

CONSENT DECREE

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Order #5

(2)

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## CONSENT DECREE

WHEREAS, contemporaneously with the lodging of this Consent Decree, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq. ("CERCLA"), for the recovery of certain response costs incurred by the United States and for the performance of remedial action in response to releases and threatened releases of hazardous substances into the environment at a site known as the Syosset Landfill Superfund Site (the "Site"), located in the hamlet of Syosset in the Town of Oyster Bay, Nassau County, New York;

WHEREAS, the Town of Oyster Bay (the "Town") operated the Syosset Landfill (the "Landfill") as a municipal landfill for approximately 40 years;

WHEREAS, during that time, the Landfill was used by various parties for disposal of industrial sludges containing heavy metals including, inter alia, lead, chromium, copper, zinc and cadmium;

WHEREAS, during much of that time, the Landfill was also used by various parties for the disposal of organic and inorganic wastes including, inter alia, solvents, halogenated

aliphatics, acrylates, latex emulsions, plasticizers, resins, elastomers, oils and sludges, esters, ketones, alcohols and polychlorinated biphenyls;

WHEREAS, during much of that time, the Landfill was also used by various parties for disposal of wastewater treatment sludges from the chemical conversion coating process of aluminum, as well as tens of thousands of rubber airplane tires;

WHEREAS, during much of that time, the Landfill was also used by various parties for the disposal of general household and community waste, septage and rubbish;

WHEREAS, an investigation by the Nassau County Department of Health ("NCDOH") in or about 1974-75 revealed the presence of heavy metals in the industrial sludges disposed of at the Landfill;

WHEREAS, the Town closed the Landfill on January 28, 1975 on the recommendation of NCDOH because of a suspected groundwater pollution problem;

WHEREAS, in 1982, ERM-Northeast, an engineering firm employed by NCDOH, conducted a groundwater sampling program at the Landfill which revealed (i) high concentrations of certain inorganic constituents: ammonia, chloride, sodium sulfate, calcium, iron alkalinity and hardness, and (ii) low to moderate concentrations of the heavy metals arsenic, cadmium, chromium and lead, at levels that exceeded State primary drinking water standards for these substances;

WHEREAS, ERM-Northeast concluded that the leachate being generated by the Landfill was typical of leachate generated by municipal landfills except for the concentrations of the heavy metals described above, which it concluded may have reflected industrial waste disposal at the Landfill;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, placed the Site on the National Priorities List ("NPL"), which is set forth at 40 CFR Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, and the New York State Department of Environmental Conservation ("NYSDEC") placed the Site on the New York State Registry of Hazardous Waste Sites as a Class 2 site, pursuant to ECL § 27-1305(4)(b);

WHEREAS, on June 19, 1986, EPA and the Town entered into an administrative consent order, Administrative Order on Consent Index No. II CERCLA-60203 (the "Consent Order"), which is attached hereto and incorporated herein as Appendix 1, by which the Town agreed, inter alia, to undertake a remedial investigation and feasibility study ("RI/FS") at the Site;

WHEREAS, EPA and the Town agree that the work to be performed at the Site shall be divided into two operable units. Operable Unit 1 ("OU1") is to include an RI/FS and, as appropriate, remediation of the Landfill itself. Operable Unit 2 ("OU2") is to include an RI/FS and, as appropriate, remediation to address the migration of contaminants, if any, from the Landfill into nearby groundwater, air and other media;

WHEREAS, this Consent Decree relates to the implementation of the remedial action for OU1;

WHEREAS, on or about August 15, 1989, the Town submitted to EPA an OU1 RI Report which concluded, in part, that ground water quality underneath and downgradient of the Landfill has been impacted by leachate as evidenced by leachate-indicator parameters (chloride, ammonia, alkalinity, hardness, total dissolved solids, specific conductance and iron) and that a plume of leachate-impacted ground water may be migrating away from the Landfill;

WHEREAS, the Town has completed the OU1 RI, has submitted a draft OU1 FS Report, and will submit a work plan for the OU2 RI within 30 days after approval by EPA of the OU1 FS Report;

WHEREAS, pursuant to Section 117 of CERCLA, the OU1 RI/FS and the OU1 Proposed Remedial Action Plan ("PRAP") were made available to the public for a public comment period commencing on July 28, 1990;

WHEREAS, a public meeting was held by EPA on August 15, 1990, to present the findings of the RI/FS and discuss the details of the PRAP;

WHEREAS, the Town desires to enter into this Consent Decree (the "Consent Decree") and agrees to perform the OU1 remedial action which is selected by EPA as necessary to protect the public health, welfare and the environment from releases and threatened releases of hazardous substances at and from the Site;



WHEREAS, the Town understands that once it has undertaken the commitment embodied in this Consent Decree to implement the OUI remedy at the Site, it will be eligible to apply for reimbursement from the State of New York for 75 percent of the eligible costs and expenses incurred in connection with that remediation pursuant to Title 3 of the Environmental Quality Bond Act ("EQBA") and regulations, guidance, and policy documents promulgated thereunder;

WHEREAS, by entering into this Consent Decree, EPA expresses no opinion as to the truth or accuracy of the Town's understanding referred to in the previous paragraph;

WHEREAS, the Town intends to apply for EQBA funding immediately upon the entry of the Consent Decree and the Town agrees that receipt or non-receipt of EQBA funds does not in any way affect its obligation to perform and meet all of the requirements under this Consent Decree;

WHEREAS, notwithstanding the fact that as of August 30, 1990, the OUI RI/FS had not yet been completed and the appropriate remedial action had not yet been selected by EPA, the Town desires to enter into this Consent Decree and to commit to implement the OUI remedy at the Site in order to become eligible to apply for EQBA funding assistance;

WHEREAS, it is the Town's intention to maximize, to the greatest practical extent, its eligibility for reimbursement of response costs incurred in the performance of the obligations of

this Consent Decree from the State pursuant to Title 3 of the EQBA and the rules, regulations and guidance thereunder;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA has notified the State of New York of EPA's negotiations with the Town regarding this Consent Decree and has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree;

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA has notified the Federal natural resources trustees of its negotiations with the Town regarding this Consent Decree and has encouraged the participation of the Federal natural resource trustees in such negotiations;

WHEREAS, the Town believes that it is qualified to implement the work hereunder and agrees to implement said work;

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, the United States and the Town have each stipulated and agreed to the making and entry of this Consent Decree prior to the taking of any testimony, based upon the pleadings herein, without any admission by the Town as to any allegation of fact set forth in the Complaint;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

## I.

JURISDICTION

The Court has jurisdiction over the subject matter of this action and the parties to this Consent Decree pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§9606, 9607, and 9613, and 28 U.S.C. §1345. The Complaint states claims against the Town upon which relief may be granted. The Court has venue over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. §9613(b). The Town waives all objections to this Court's jurisdiction to enter and enforce this Consent Decree.

## II.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned parties and their receivers, trustees, successors and assigns. The undersigned representative of the Town certifies that she or he is authorized by the Town to enter into the terms and conditions of the Consent Decree and to execute and legally bind that entity to it. The Town agrees to instruct its officers, directors, employees, agents and contractors involved in the performance of the work required by this Consent Decree to cooperate in carrying out the obligations of the Town under this Consent Decree. The Town agrees that its officers, directors, employees, agents and contractors involved in the performance of the work required by this Consent Decree shall take all necessary steps to accomplish the performance of said work in accordance

with this Consent Decree. The Town shall condition all contracts and subcontracts entered into for the performance of such Work upon compliance with the terms and conditions of this Consent Decree insofar as the terms and conditions of this Consent Decree pertain to the particular contractors' and subcontractors' obligations. The Town shall be responsible to the United States for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

### III.

#### DEFINITIONS

Whenever the following terms are used in this Consent Decree, the following definitions specified in this Section shall apply:

A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq.

B. "EPA" means the United States Environmental Protection Agency.

C. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

D. "Landfill" means the property formerly operated by the Town of Oyster Bay as the Syosset Landfill.

E. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, as amended by 55 Fed. Reg. 8666 (March 8, 1990).

F. "NYSDEC" means the New York State Department of Environmental Conservation.

G. "Operation and Maintenance" or "O&M" means those activities required under this Consent Decree for the purpose of maintaining the effectiveness of the measures taken in the Remedial Action (as defined below) following the implementation of those measures.

H. "OU1 Record of Decision" or "OU1 ROD" means the document issued by EPA which determines whether a remedial action is required for OU1 at the Site and, if so, selects the remedy for OU1 at the Site to address the release or threat of release of hazardous substances, pollutants and contaminants into the environment at and from the Site.

I. "Party" or "Parties" means the United States of America and/or the Town.

J. "Plaintiff" means the United States of America acting on behalf of EPA.

K. "Remedial Action" or "OU1 Remedial Action" means the remedy to be authorized by the OU1 ROD, as further delineated in the various EPA-approved plans referred to in Section VI, below.

L. "Response Costs" means any costs incurred by Plaintiff pursuant to any provision of CERCLA with regard to the Syosset Landfill Superfund Site.

M. "Site" means the Syosset Landfill Superfund Site, located in the hamlet of Syosset in the Town of Oyster Bay, Nassau County, New York, and encompasses the Landfill as well as

all areas, if any, into which contaminants from the Landfill have migrated. The Site's location is shown generally in Figure 1, attached hereto.

N. "State" means the State of New York.

O. The "Town" means the Town of Oyster Bay and its receivers, trustees, successors and assigns.

P. "Work" means all work and other activities required by and pursuant to this Consent Decree, including, but not limited to, the implementation and Operation and Maintenance of the Remedial Action authorized by the OUI ROD, and the preparation of the schedules, plans and reports required hereunder to be submitted in connection therewith.

Q. All terms not otherwise defined herein shall have their ordinary meanings except that those terms defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings set forth therein.

#### IV.

##### PURPOSE

The purpose of this Consent Decree is to serve the public interest by protecting the public health, welfare, and the environment from releases and threatened releases of hazardous substances at and from the Site, and to settle certain claims asserted by the United States against the Town as stated in the Complaint.

GENERAL PROVISIONS

A. Commitment of the Town. The Town agrees to finance and perform the Work in accordance with the standards, specifications, requirements and schedules set forth in, or established pursuant to, this Consent Decree, and to reimburse the United States for Response Costs to the extent provided herein.

B. Permits and Approvals.

1. All activities undertaken by the Town pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits, including, but not limited to, laws relating to occupational safety and health. In the event that there is a conflict in an application of applicable federal, state or local laws or regulations, the more stringent law or regulation shall apply. Notwithstanding any other provision in this Consent Decree and pursuant to Section 121(e)(1) of CERCLA, no federal, state or local permits shall be required for any response action conducted entirely on-Site. The Town shall use its best efforts to obtain all permits and approvals necessary for off-Site work under federal, state or local laws and shall submit timely applications and requests for, and shall diligently seek to obtain, any such permits and approvals. If, after use of best efforts, the Town is unable to obtain such permits or

approvals, EPA may seek to assist the Town in obtaining such permits or approvals for off-Site work.

2. The Town shall include in all contracts or subcontracts entered into for Work required under this Consent Decree provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with this Consent Decree and all applicable laws and regulations. This Consent Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal, state or local law or regulation.

C. National Contingency Plan. The Town shall perform the Work in accordance with the NCP and any amendments thereto, and the standards, specifications and schedules of completion set forth in or approved by EPA pursuant to Section VI hereof.

D. Compliance with Other Laws. All off-Site transfer, treatment, storage, or disposal of hazardous substances by the Town must be in compliance with the applicable requirements of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., as well as their implementing regulations, and all other applicable laws, including, but not limited to, 40 CFR Parts 262 and 263 and 6 NYCRR Parts 372 and 373. Furthermore, EPA shall receive notice from the Town of any facilities that the Town proposes to use for such off-Site transfer, storage, treatment, or disposal at least



five business days prior to the commencement of any such use, unless this requirement is waived in writing by EPA. Any and all off-Site disposal activities conducted by the Town under this Consent Decree shall be performed in conformance with the NCP, and any amendments thereto, and Revised Procedures for Planning and Implementing Off-site Response Actions (U.S. EPA Office of Solid Waste and Emergency Response, November 13, 1987), and any amendments thereto. In addition, if hazardous substances from the Site are to be shipped to a waste management facility outside of New York State, the Town shall insure that the environmental agency of the accepting state is notified of: (i) the name and location of the facility to which the wastes are to be shipped; (ii) the type and quantity of waste to be shipped; (iii) the expected schedule for the waste shipments; and (iv) the method of transportation. The Town shall provide such notification to the affected state in writing as soon as practicable, but in any event at least five business days prior to the said shipments, unless this requirement is waived or modified by EPA in writing. The Town shall provide a copy of said notification to EPA.

E. The Town shall give EPA advance notification of all field activities to be performed pursuant to this Consent Decree in accordance with specific schedules presented in the work plans developed and approved pursuant to this Consent Decree.

F. 1. Within 30 days after the entry of this Consent Decree, the Town shall record a certified copy of this Consent Decree with the County Clerk's Office, Nassau County, New York.

Thereafter, each deed, title or other instrument of conveyance for property on which the Landfill, or any part of it, is located shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

2. The Town's obligation to provide access under Section XI shall run with the land and shall be binding upon the Town and any and all persons who subsequently obtain any interest in property included in the Landfill (hereinafter "Successors-in-Title"). Within 30 days after the entry of this Consent Decree, the Town shall record with the County Clerk's Office, Nassau County, New York, a notice of obligation to provide access. Each subsequent deed to any property on which the Landfill, or any part of it, is located, shall reference the recorded location of such notice and covenants applicable to the property.

3. The Town and any Successor-in-Title shall, within 30 days prior to the conveyance of any interest in property on which the Landfill, or any part of it, is located, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Town shall continue to meet its obligations under this Consent Decree and, subject to approval by EPA, the grantee shall also

assume such obligations unless exclusive assumption of such obligations by the grantee is approved by EPA.

G. The Town shall ensure that a qualified professional engineer or a qualified representative or designee is present at the Site at all times when Work is being performed at the Site under this Consent Decree, and that the engineer or qualified representative or designee observes and inspects such Work.

H. All time periods referred to in this Consent Decree shall be construed as calendar days, rather than business days, except where expressly stated otherwise herein.

## VI.

### WORK TO BE PERFORMED

A. EPA will select the remedial alternatives, if any, to be implemented for OU1 at the Site and will document such selection in a ROD for OU1 (the "OU1 ROD"). The remedial alternative selected by EPA in the OU1 ROD shall hereinafter be referred as the "OU1 Remedial Action". Upon issuance by EPA, the OU1 ROD shall be deemed incorporated into, and an enforceable part of, this Consent Decree. The Town shall perform the Work in a manner consistent with the OU1 ROD.

B. 1. All of the Work to be performed by the Town pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional engineer licensed in the State of New York (hereinafter the "Supervising Contractor"). Within 120 days from the lodging of this Consent Decree, the Town

shall notify EPA, in writing, of the name, title, and qualifications of the Supervising Contractor proposed to be used in carrying out the Work under this Consent Decree. The Supervising Contractor may not perform any Work under this Consent Decree until EPA has approved the Supervising Contractor. Such approval may not be unreasonably withheld, and disapproval will be based upon the Supervising Contractor's professional qualifications and other relevant considerations.

2. If EPA disapproves of the Supervising Contractor proposed by the Town, the Town shall select another Supervising Contractor and shall obtain the approval of EPA as indicated above. If at any time the Town proposes to change its Supervising Contractor, the Town shall notify EPA, in writing as above, and shall obtain approval from EPA before the new Supervising Contractor performs any Work under this Consent Decree.

OU1 Remedial Design ("OU1 RD")

C. Within 90 days of EPA's issuance of the OU1 ROD or within 90 days of the selection of the Supervising Contractor, whichever is later, the Town shall submit to EPA for review, modification and/or approval a detailed work plan (the "OU1 RD Work Plan") for designing the construction and/or installation of equipment necessary for implementation of the OU1 Remedial Action selected by EPA in the OU1 ROD, and for implementing any activities which are necessary for the proper completion of the OU1 RD (e.g., RD sampling and analysis and treatability studies).

Upon approval by EPA, the OU1 RD Work Plan shall be incorporated into and become enforceable under this Consent Decree.

D. The OU1 RD Work Plan shall include, but not be limited to, the following:

1. An outline and schedule of all OU1 RD activities, including, but not limited to, the following: a preliminary design (35%) submittal in compliance with paragraph VI.F.; a final design (95%) submittal in compliance with paragraph VI.G.; a closure investigation report and closure plan satisfying the criteria set forth in 6 NYCRR Part 360; and all other activities necessary for the proper completion of the OU1 RD (e.g., sampling and analysis, surveying, etc.).

2. A strategy for the implementation of the plans and specifications for the remedy set forth in the OU1 ROD.

3. A Site Operations Plan which shall include, but not be limited to, the following: (a) a map depicting sampling locations; (b) a comprehensive management plan, including identification of contractors and subcontractors and their respective responsibilities for performance of sampling, analysis and monitoring activities; (c) a schedule for performing specific tasks; (d) a Quality Assurance/Quality Control ("QA/QC") Plan suitable to the data quality objectives required to design the remedy; (e) provisions and schedules for the completion and submission to EPA of the results of any such analysis, as well as QA/QC validation of the laboratory data and sampling and analytical procedures used for each sample obtained; (f) a

description of the chain of custody procedures to be followed;

(g) a Health and Safety Plan for field design and construction activities prepared in conformance with applicable Occupational Health and Safety Administration ("OSHA") and EPA requirements, including, but not limited to, OSHA regulations set forth at 29 CFR 1910.120, as amended by 54 Fed. Reg. 9294 (March 6, 1989);

(h) provisions that any laboratory used by the Town shall subscribe to EPA quality assurance procedures unless EPA determines that other procedures may be used for particular portions of the work; that the Town shall require in each contract with a laboratory utilized by the Town in implementing this Consent Decree that EPA have access to any such laboratory; and that the Town shall have any such designated laboratory analyze samples submitted by EPA for quality assurance monitoring; and (i) the curricula vitae of each professional expected to participate in on-Site monitoring activities or other activities to be performed pursuant to this Consent Decree, with a provision for submitting further curricula vitae as other professionals become or are about to become involved in these activities.

E. EPA will either approve the OU1 RD Work Plan or will require modifications of it in accordance with the procedures set forth in Section XIV hereof. The Town shall perform the RD (and any other activities called for by the OU1 RD Work Plan) in conformance with the OU1 RD Work Plan (including the schedules contained therein), the OU1 ROD and the requirements of this

Consent Decree. Unless otherwise authorized by EPA, the Town shall not commence remedial design activities at the Site prior to approval of the OUI RD Work Plan.

F. The Town shall submit the preliminary design (35%) submittal to EPA in accordance with the EPA-approved schedule in the OUI RD Work Plan. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) a project delivery strategy; (3) preliminary plans, drawings and sketches; (4) required specifications in outline form; and (5) a preliminary construction schedule. EPA will either approve the preliminary design submittal or will require modifications of it in accordance with the procedures set forth in Section XIV hereof.

G. The Town shall submit the final design (95%) submittal in accordance with the EPA-approved schedule in the OUI RD Work Plan. The final design submittal (the "OUI RD Report") shall include, at a minimum, the following: (1) final plans and specifications; (2) an Operation and Maintenance Plan; (3) a Construction Quality Assurance Project Plan ("CQAPP"); (4) a Field Sampling Plan; (5) a Contingency Plan; (6) a final construction cost estimate; (7) a plan for implementation of construction services, including, but not limited to, review of shop drawings to confirm consistency with the OUI RD, construction oversight, and the submission of engineering drawings depicting the constructed facility; and (8) a proposed schedule for implementing all of the above. The CQAPP shall

detail the approach to quality assurance during construction activities at the Site. EPA will either approve the OU1 RD Report or will require modifications of it in accordance with the procedures set forth in Section XIV hereof.

OU1 Remedial Action

H. Within 120 days of the Town's receipt of EPA's statement of approval of the OU1 RD Report, the Town shall complete contractor procurement and initiate construction of the OU1 Remedial Action and shall thereafter perform and complete such construction in conformance with the EPA-approved OU1 RD Report and schedule contained therein, the OU1 ROD, and the requirements of this Consent Decree. Prior to the commencement of construction, the Town shall notify EPA in writing of the name and qualifications, including curricula vitae, of the construction contractor(s) to whom the contract was awarded.

I. The work to be performed by the Town pursuant to this Consent Decree shall, at a minimum, achieve the performance standards specified in the OU1 ROD (the "OU1 Performance Standards"). The Town acknowledges and agrees that nothing in this Consent Decree or in the OU1 RD Work Plan or other plans approved by EPA pursuant to this Consent Decree constitutes a warranty or representation of any kind by EPA that compliance with the EPA-approved plans prepared pursuant to this Consent Decree will achieve the OU1 Performance Standards and that such compliance shall not foreclose EPA from seeking performance of all terms and conditions of this Consent Decree, including the applicable OU1 Performance Standards.



-1-

J. 1. At least 14 days prior to completion of the construction of the OUI Remedial Action, the Town and its contractor(s) shall be available to accompany EPA personnel or their representatives on a pre-final inspection. The pre-final inspection shall consist of a walk-through of the Site to determine the completeness of the OUI Remedial Action and its consistency with the OUI RD Report, this Consent Decree and applicable federal, State and local laws, rules and regulations.

2. Following the pre-final inspection, EPA will either specify the necessary corrective measures to the OUI Remedial Action, as appropriate, or provide the Town notice to proceed with the development of an OUI Remedial Action Report. If EPA requires corrective measures to the OUI Remedial Action, the Town shall undertake the corrective measures according to a schedule approved by EPA. Within 14 days after completion of the construction of the corrective measures, the Town and its contractor(s) shall be available to accompany EPA personnel or their representatives on an inspection, as provided for in the preceding paragraph. Said inspection will be followed by further directions and/or notifications by EPA as provided above in this paragraph.

3. Prior to the final inspection, the Town shall submit to EPA an O&M Manual which shall supplement the O&M Plan submitted pursuant to Section VI.G. above, by addressing the O&M requirements for the facility as actually constructed. This O&M Manual shall conform to the EPA Guidelines contained in

"Considerations for Preparation of Operation and Maintenance Manuals," EPA 68-01-0341, and any amendments thereto, and shall provide plans for long-term monitoring if required by the OUI ROD.

4. EPA will either approve the O&M Manual or will require modifications of it in accordance with the procedures set forth in Section XIV hereof. The Town shall perform O&M (and any other activities called for by the O&M Manual) in conformance with the O&M Manual (including the schedules contained therein), the OUI ROD and the requirements of this Consent Decree.

OUI Remedial Action Report

K. 1. Within 90 days after receiving a notice from EPA to proceed with the development of a OUI Remedial Action Report, the Town shall submit a Draft OUI Remedial Action Report to EPA which shall include a Notice of Completion indicating that the OUI Remedial Action (not including Operation and Maintenance and any long-term monitoring activities) has been completed in compliance with the requirements of the OUI RD Report, the OUI ROD and this Consent Decree, and which provides as-built engineering drawings which depict the construction areas. The as-built drawings shall be signed and stamped by a professional engineer licensed to practice in the State of New York, and shall be accompanied by that engineer's certification that the OUI Remedial Action (not including Operation and Maintenance activities) has been completed in conformance with the terms of the OUI RD Report, the OUI ROD and this Consent Decree.

2. The Draft OUI Remedial Action Report shall also include, but need not be limited to, the following:

- a) verification that all remedial equipment has been decontaminated, dismantled and removed from the Site;
- b) documentation that all other terms or specifications contained in the OUI RD Report have been met in accordance with this Consent Decree;
- c) a certification statement, signed by a responsible corporate official of the Town, which states the following:

"I certify that the information contained in or accompanying this submission is true, accurate and complete."

"As to those identified portions of this submission for which I cannot personally verify their truth and accuracy, I certify, as the Town official having supervisory responsibility for the person(s) who, acting under my direct instructions, personally verified to me that the identified portions are true and accurate, that this information is true, accurate and complete."

3. EPA will either approve the Draft OUI Remedial Action Report, thus making it the Final OUI Remedial Action Report, require modifications of it in accordance with the procedures set

forth in Section XIV, below, and/or require corrective measures to the OU1 Remedial Action. If EPA requires corrective measures to the OU1 Remedial Action, the Town shall undertake the corrective measures according to a schedule approved by EPA. Such corrective measures, if any, shall be followed by an inspection, further notification(s) by EPA, and submittal by the Town of a revised Draft OU1 Remedial Action Report to EPA, in accordance with Section VI.J., above, and this Section VI.K.

#### Operation and Maintenance

L. Commencing with the completion of construction of the OU1 Remedial Action, the Town shall perform Operation and Maintenance of the OU1 Remedial Action and any long-term monitoring required pursuant to the OU1 ROD in accordance with the O&M Manual.

### VII.

#### FAILURE TO ATTAIN PERFORMANCE STANDARDS

A. In the event that EPA or the Town determines that additional response activities are necessary to meet the OU1 Performance Standards, notification of the need for such additional response activities shall be provided to the other party's Project Coordinator (as defined in Section X hereof).

B. Any additional response activities that the Town determines are necessary to meet the OU1 Performance Standards shall be subject to approval by EPA and, if authorized by EPA, shall be completed by the Town in accordance with plans,

specifications and schedules approved by EPA pursuant to Section XIV.

C. Unless otherwise agreed to by EPA, within 60 days of receipt of notice by EPA that additional response activities are necessary to meet the OUI Performance Standards, the Town shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of Section VI hereof. Upon approval of the plan pursuant to Section XIV, the Town shall implement the plan for additional response activities in accordance with the schedule contained therein. In the event the Town requires more than 60 days to prepare a work plan for the additional response activities, it may request a reasonable additional period of time.

#### VIII.

##### U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

A. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, EPA will review the Remedial Action at the Site at least every five years after it has been initiated to assure that human health and the environment are being protected by the Remedial Action being implemented. If upon any such review, EPA determines that further response action is appropriate at the Site to assure protection of human health and the environment, then EPA may take

or require the Town or any other potentially responsible parties to take such additional response action.

B. The Town shall reimburse EPA for the costs incurred in conducting the periodic reviews referred to in this Section.

C. Upon completion of each of the reviews pursuant to this Section, EPA will notify the Town of its determination and may order additional response action pursuant to Section 106 of CERCLA, or may take additional response action pursuant to Section 104 of CERCLA, to assure protection of human health and the environment. If EPA orders the Town to take additional response action pursuant to this Section, the Town will be provided with an opportunity to confer with EPA on the response action ordered by EPA.

#### IX.

##### QUALITY ASSURANCE/QUALITY CONTROL; CHAIN OF CUSTODY

A. Any QA/QC plan(s) submitted by the Town pursuant to this Consent Decree shall be completed in accordance with the EPA publication "Test Methods for Evaluating Solid Wastes" ("SW-846") (November, 1986), and the EPA documents entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80) and "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring" (USEPA, Office of Water Regulations and Standards, May 1984), or any revised versions thereof.

B. The Town shall use QA/QC procedures in accordance with the QA/QC Plan(s) submitted and approved by EPA pursuant to this Consent Decree, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual (November 1984), the National Enforcement Investigations Center Manual for the Evidence Audit (September 1981), and Section 1.3 of SW-846, or any amended versions thereof, for all sample collection and analysis activities conducted pursuant to this Consent Decree. In addition, the Town shall:

1. Ensure that all contracts with laboratories used by the Town for the analysis of samples taken pursuant to this Consent Decree provide for access of EPA personnel and EPA-authorized representatives to assure the accuracy of laboratory results related to the Site;
2. Confirm that the laboratories utilized by the Town for the analysis of samples taken pursuant to this Consent Decree have been certified by EPA as being capable of performing all analyses according to accepted EPA methods, and shall confirm that all contracts with such laboratories require such methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis", dated February 1988, and any amendments made thereto during

the course of the implementation of this Consent Decree;

3. Confirm that all laboratories used by the Town for analysis of samples taken pursuant to this Consent Decree have been certified by EPA as being participants in an EPA or EPA-equivalent QA/QC program; and
4. Ensure that all contracts with the laboratories used by the Town for the analysis of samples taken pursuant to this Consent Decree require the laboratories to analyze samples that EPA may submit to those laboratories for purposes of insuring that the laboratories meet EPA-approved QA/QC requirements.

X.

PROJECT COORDINATOR

A. EPA has designated the following individual as its Project Coordinator with respect to the Remedial Actions at the Site:

Sherrel Henry  
New York/Caribbean Compliance Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region II  
26 Federal Plaza, Room 747  
New York, N.Y. 10278  
(212) 264-[8675]

Within ten days of the effective date of this Consent Decree, the Town shall select its own Project Coordinator and notify EPA in writing of the name, address, qualifications, job title and telephone number of that Project Coordinator. The Town's Project



Coordinator, together with the Project Coordinator of EPA, shall monitor the progress of the Work and coordinate communication between EPA and the Town. The EPA Project Coordinator shall have the authority vested in the On-Scene Coordinator by the NCP as well as the authority to ensure that the Work is performed in accordance with all applicable statutes, regulations, and this Consent Decree. The EPA Project Coordinator shall also have the authority to require a cessation of the performance of any portion of the Work that, in the opinion of the EPA Project Coordinator, may present or contribute to an endangerment to public health, welfare, or the environment or cause or threaten to cause the release of hazardous substances from the Site. In the event the EPA Project Coordinator suspends the Remedial Action or other Work, EPA will, if necessary, extend the compliance schedule of this Consent Decree for a period of time equal to the time of the suspension of the Remedial Action or other Work, unless the need to suspend the Work was directly attributable to a negligent or willful act or failure to act on the part of the Town. EPA shall notify the Town, in writing, of any such unilateral extension.

B. EPA and the Town shall have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least seven days prior to the change where possible, and concurrently with the change or as soon thereafter as possible in the event that advance notification is not possible.

C. The Town's Project Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the Work. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. The Town's selection of a Project Coordinator shall be subject to EPA approval.

D. The EPA Project Coordinator may assign other representatives, including other EPA employees or contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Prior to invoking formal Dispute Resolution procedures, any disputes arising between the EPA Site representative and the Town's Site representative or their contractors which cannot be resolved shall be referred to the EPA Project Coordinator.

## XI.

### FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. To the extent that any of the areas where Work is to be performed hereunder are presently owned by parties other than the Town, the Town shall use its best efforts timely to obtain access from the present owners for purposes of implementing the requirements of this Consent Decree. Such access shall be provided not only for the Town, but also for EPA and NYSDEC and authorized representatives or agents of EPA and NYSDEC. To the extent that access is needed to perform a particular portion of

the Work, the Town shall notify EPA at least 45 days prior to the date that that portion of the Work is scheduled to commence if the Town is unable by that date, despite its use of best efforts, to obtain the needed access; provided that if, under the particular circumstances, it is not possible for the Town to give EPA 45 days advance notice, the Town shall provide EPA with as much advance notice as possible of the inability to obtain access. The Town shall include in its notification to EPA a summary of the steps the Town has taken to attempt to obtain access. As appropriate, EPA may assist the Town in obtaining such access. The Town shall reimburse EPA for all costs, including enforcement costs, incurred by EPA in assisting the Town in obtaining such access.

B. During the effective period of this Consent Decree, EPA, NYSDEC and their representatives, including contractors and subcontractors, shall have access at all times to the Site, and any other premises upon which field work or laboratory analytical work is to be performed under this Consent Decree, for purposes of monitoring the progress of activities taking place, verifying any data or information submitted to EPA, conducting investigations relating to contamination at or near the Site, obtaining samples at the Site, inspecting and copying records, operating logs, contracts, or other documents required to assess the Town's compliance with the Consent Decree, or for any other purpose reasonably related to EPA's and/or NYSDEC's oversight of the implementation of this Consent Decree.

C. The Town shall provide to EPA, upon request, copies of all documents and information within the Town's possession and/or control, or within the possession or control of its contractors or agents, relating to response activities at the Site or to the implementation of this Consent Decree. These documents and information shall include, but not be limited to, the results of all sampling and analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents related to the Work, but shall not include documents covered by the attorney-client or attorney work-product privilege. The Town shall also make available to EPA, for purposes of investigation, information gathering, or testimony, the Town's employees, agents or representatives with knowledge of relevant facts concerning the performance of the Work.

D. At the request of EPA, the Town shall provide split or duplicate samples to EPA or allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by the Town during the course of the implementation of this Consent Decree. The Town shall notify EPA at least 14 days in advance of the commencement of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary. EPA will, absent emergency circumstances, make reasonable efforts to notify the Town 5 days in advance of the commencement of any such additional sample collection activity that takes place on the Town's property, and

will allow the Town an opportunity to take split or duplicate samples of the samples collected by EPA.

E. Notwithstanding any other provision of this Consent Decree, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 et seq. ("RCRA"), and any other applicable statute or regulations.

## XII.

### PUBLIC INSPECTION

All data, factual information, and documents submitted by the Town to EPA pursuant to this Consent Decree may be released to the public by EPA unless identified, at the time of submission to EPA, as confidential business information by the Town and determined by EPA to merit treatment as such in accordance with applicable law. The Town shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified in Section 104(e)(7)(F)(i) through (viii) of CERCLA, any other documents or information evidencing conditions at or around the Site, or any other chemical, scientific or engineering data related to either of the Remedial Actions or submitted pursuant to this Consent Decree.

REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, the Town shall prepare and provide to the EPA and NYSDEC written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) include all results of sampling and tests and all other data received by the Town during the previous month in the implementation of the Work; (3) describe all actions, data and plans which are scheduled for the next month and provide other information relating to the progress of design and construction as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Remedial Action, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the last day of every month following the effective date of this Consent Decree.

B. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or State or Federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires

reporting to the National Response Center, the Town shall, within 24 hours, orally notify the EPA Project Coordinator, or, in the event of the unavailability of the EPA Project Coordinator, the Response and Prevention Branch, Region II, United States Environmental Protection Agency, in addition to the reporting required by Section 103. Within 20 days of the onset of such an event, the Town shall furnish to EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

D. All reports and other documents submitted by the Town to EPA (other than the monthly progress reports referred to above) which purport to document the Town's compliance with the terms of this Consent Decree shall be signed by a responsible official of the Town.

#### XIV.

##### PLANS, REPORTS AND ITEMS REQUIRING EPA APPROVAL

A. If EPA comments upon any plan, report (other than a progress report, covered by Section XIII.A., above), or other item required to be submitted for EPA approval pursuant to this Consent Decree, EPA will provide written notice to the Town of its comments. If EPA disapproves the plan, report or other item, the notice will state the basis for EPA's disapproval, and the Town shall have 21 days from the receipt of such comments to correct any deficiencies and resubmit the plan, report or item for approval, unless a shorter or longer period is specified by

EPA. The Town must address each of the EPA comments and resubmit the plan, report or item with the required changes within the time period set forth above. If and when EPA approves any such plan, report or other item, the Town shall promptly proceed to take any action required by the plan, report or other item, as approved or modified by EPA.

B. If any plan, report or other item required to be submitted to EPA for approval pursuant to this Consent Decree cannot be approved by EPA after it has been resubmitted following receipt of EPA's comments on the submittal, the Town shall be deemed to be out of compliance with this Consent Decree, unless EPA's disapproval of the plan, report or other item is overturned as a result of dispute resolution procedures carried out pursuant to Section XIX, herein. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require that the Town correct the deficiencies, in accordance with the preceding paragraph. In addition, or in the alternative, EPA retains the right to amend or develop the plan, report or other item. Subject only to its right to invoke the dispute resolution procedures of Section XIX, below, the Town shall implement any such plan, report or item as amended or developed by EPA.

C. All plans, reports and other submittals required to be submitted to EPA under this Consent Decree shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Decree.



## XV.

ASSURANCE OF ABILITY TO COMPLETE WORK

A. The Town shall demonstrate to EPA's satisfaction the Town's ability to complete the Work and to pay all claims that may arise from the performance of the Work by providing within 60 days of lodging of this Consent Decree, internal financial information regarding the Town's net worth, cash flow, total liabilities, and current rating for most recent bond issuances sufficient to demonstrate to EPA's satisfaction that the Town has the financial capability to complete the Work. In addition, the Town shall submit its most recent bond issuance statements conveying such information annually, on the anniversary of the effective date of this Consent Decree.

B. In the event that EPA determines at any time that such financial assurances are inadequate, the Town shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval another form of financial assurance which demonstrates the Town's ability to complete the work and to pay all claims that may arise from the performance of the work. Such other form of financial assurance may consist of a surety bond, letter of credit, guarantee by a third party, or such other form as is deemed satisfactory by EPA. The Town's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

## XVI.

RETENTION OF RECORDS

A. The Town shall preserve and retain all records and documents now in its possession or control or which may come into its possession or control that relate in any manner to the former operation of the Syosset Landfill and the Work to be performed at the Site, regardless of any document retention policy to the contrary, for six years after the certification of completion of the Remedial Action.

B. Until completion of the Remedial Action and termination of this Consent Decree, the Town shall preserve, and shall instruct its contractors, subcontractors, and anyone else acting on the Town's behalf at the Site to preserve (in the form of originals or exact copies, or, if approved by EPA, microfiche or microfilm of all originals) all records and documents relating to the performance of the Work at the Site. Upon the completion of the Remedial Action and if requested by EPA, copies of all such records and documents shall be delivered to the EPA Project Coordinator, except for documents covered by the attorney-client or attorney work-product privilege.

## XVII.

RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of EPA under Section 104 of CERCLA, 42

U.S.C. §9604, and its enforcement authority under Section 106 of CERCLA, 42 U.S.C. §9606, or any other federal response or enforcement authority, except as specifically provided in Section XXII, below.

#### XVIII.

##### FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of the Town which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" shall not include inability of the Town to pay necessary costs, increased costs or expenses, or failure to make timely and complete application for permits, access and any other necessary authorizations.

B. When circumstances occur or, cumulatively, combine to develop so that they may delay the proper completion of any phase of the Work, or delay access to the Site or to any other property on which any part of the Work is to be performed -- whether or not such circumstances are caused by or constitute a "Force Majeure" event -- the Town shall notify the EPA Project Coordinator by telephone, or in the event of his or her unavailability, the Chief of the New York/Caribbean Compliance Branch of the Emergency and Remedial Response Division of EPA Region II, within 48 hours after the Town first becomes aware that such circumstances have occurred or developed. Within seven days of the date when the Town first becomes aware of the event

which it contends is responsible for the delay, the Town shall supply to EPA in writing the reason(s) for and anticipated duration of such delay, the Town's rationale for interpreting such circumstances as being beyond its control (should that be the Town's claim), the measures taken and to be taken by the Town to prevent or minimize the delay, and the timetable for implementation of such measures. Such notice shall be accompanied by all available pertinent documentation, including, but not limited to, third party correspondence. Failure to give oral notice to the EPA Project Coordinator and to give written explanation to EPA in a timely manner shall constitute a waiver of any claim of Force Majeure. The Town shall use its best efforts to discover and keep apprised of any circumstances which may delay the completion of any phase of the Work or delay access to the Site or any other property on which any part of the Work is to be performed, and shall use its best efforts to avoid or minimize any delay and any effects of a delay.

C. If the Town claims and EPA agrees that a delay is or was attributable to a Force Majeure event, the Parties shall modify this Consent Decree or the affected plans or schedules incorporated in this Consent Decree, if and to the extent necessary, to provide such additional time as may be required to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay caused by the Force Majeure event.

D. If EPA does not agree that the reason for the delay was caused by an event of Force Majeure, or that the duration of the delay is or was warranted under the circumstances, the Town may seek to resolve the dispute according to Section XIX, herein. The Town shall have the burden of proving that the delay is or was caused by circumstances beyond its control and that the amount of additional time requested is necessary to compensate for those circumstances.

#### XIX.

##### DISPUTE RESOLUTION

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree; PROVIDED, HOWEVER, that the dispute resolution procedures shall not apply to any dispute which arises regarding or in any way related to the selection of remedy in the ROD.

B. Any dispute between EPA and the Town which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute for a period of up to 20 days from the time the dispute arises. For purposes of this Section, a dispute shall be deemed to arise when one party to this Consent Decree notifies the other in writing of the existence of the dispute; provided, however, that the Town shall notify EPA as soon as it becomes aware of the existence of the dispute. The period for

informal negotiations may be extended or shortened by agreement between EPA and the Town.

C. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the end of the informal negotiation period, the Town provides EPA with written notice of the Town's invocation of the formal dispute resolution procedures of this Section. Within 10 days of submitting said notice, the Town shall further provide EPA with a written statement of the issues in dispute, the relevant facts upon which the dispute is based, any factual data, analysis or opinion supporting the Town's position, and all supporting documentation on which the Town relies (hereinafter, "the Town's Statement of Position"). In the event the Town requires more than 10 days to prepare or obtain necessary documentation for its Statement of Position, it may request a reasonable additional period of time from EPA; provided that, any denial by EPA of such a request shall not itself be subject to the dispute resolution procedures of this Section, and provided further, that the time taken up by the request for the extension of time and EPA's response to that request shall not, by itself, entitle the Town to an extension of the deadline for submission of its Statement of Position. After receipt of the Town's Statement of Position, EPA may submit to the Town a written statement of EPA's position on the issues in dispute, the relevant facts upon which the dispute is based, any factual data,

analysis or opinion supporting EPA's position, and supporting documentation relied upon by EPA (hereinafter, "EPA's Statement of Position").

D. Formal dispute resolution for disputes pertaining to the adequacy of any response action, in addition to all other disputes which are accorded review on the administrative record under applicable principles of administrative law, shall be conducted pursuant to the procedures set forth in this paragraph. For purposes of this paragraph, the adequacy of any response action includes: (1) the adequacy or appropriateness of plans or procedures to implement plans, or any other aspect of the Work under this Consent Decree; and (2) the adequacy of response actions performed pursuant to this Consent Decree. Nothing herein shall be construed to allow any dispute by the Town regarding EPA's selection of remedy in the ROD.

1. The administrative record shall be maintained by EPA and shall include the written notification of the dispute, the Town's Statement of Position, EPA's Statement of Position and, if issued, the final decision of the Director of the Emergency and Remedial Response Division, EPA Region II, pursuant to subparagraph 2, below.

2. Upon review of the administrative record, the Director of the Emergency and Remedial Response Division, EPA Region II (the "Director"), shall issue a final decision resolving the dispute. Such decision shall be binding, subject

to the rights of judicial review set forth in the following subparagraph.

3. Any final decision issued by EPA pursuant to the preceding subparagraph shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Town within 14 days of receipt of EPA's final decision pursuant to subparagraph 2, above. Said notice of judicial appeal shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. A copy of said notice shall be served upon the United States prior to or contemporaneously with the filing of the notice with the Court. The United States may file a response within 21 days to the Town's notice of judicial appeal.

4. In proceedings on any dispute pertaining to the adequacy of any response action or any other dispute which is accorded review on the administrative record under applicable principles of administrative law, the Town shall have the burden of demonstrating that the decision of the Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the Director's decision shall be on the administrative record compiled in accordance with this paragraph D.

E. Formal dispute resolution for disputes not pertaining to the adequacy of any response action or which are not otherwise



accorded review on the administrative record under applicable principles of administrative law, shall be governed by this paragraph E.

1. Following receipt of the Town's Statement of Position submitted pursuant to paragraph XIX.C. above, the Director will issue a final decision regarding the dispute. The Director's decision shall be binding on the Town unless, within 14 days of receipt of the decision, the Town files with the Court and serves on the United States a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response within 21 days to the Town's notice of judicial appeal.

2. Judicial review of any dispute which does not pertain to the adequacy of any response action or is not otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by applicable provisions of law. In any such proceeding, the Town shall bear the burden of coming forward with evidence and the burden of persuasion on factual issues.

F. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone or affect in any way any obligation of the Town under this Consent Decree, except that payment of stipulated penalties with respect

to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Town does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI, below; except that if EPA takes longer than 20 days after receipt of the Town's Statement of Position pursuant to paragraph C., above, either to submit EPA's Statement of Position (provided EPA elects to submit a Statement of Position) pursuant to paragraph C., above, or to issue EPA's final decision pursuant to subparagraphs D.2 or E.1, above, then the Town is not obligated to pay those stipulated penalties which accrued after the conclusion of the aforementioned 20-day period and before EPA's issuance of its Statement of Position or final decision.

## XX.

### REIMBURSEMENT

A. Within 60 days of the entry of this Consent Decree, the Town shall pay to EPA \$35,000 in partial reimbursement of costs incurred by EPA in overseeing the Town's performance of the OUI RI/PS.

B. The Town shall also pay to the Fund all costs incurred by EPA after the entry of this Consent Decree in conducting the periodic reviews referred to in Section VIII, above, in assisting the Town in obtaining needed access to the Site or other areas

where Work is to be performed hereunder, in reviewing or developing the plans, reports, design documents and other items referred to or required hereunder, or in otherwise overseeing the implementation of the Work. EPA will periodically submit accountings of such costs to the Town. The Town shall, within 75 days of its receipt of each such accounting, pay to the Fund the amount claimed by EPA unless, within 60 days, the Town invokes the dispute resolution procedures of Section XIX and otherwise complies with the terms of paragraph D., below.

C. All payments required by this section shall be made by Town check made payable to the "EPA Hazardous Substance Superfund" and shall reference on their face the "Syosset Landfill Superfund Site," "CERCLA Number 0239" and "DOJ Case Number 90-11-2-491". Payment shall be deemed made when received at the following address: -

EPA - Region 2  
Attn: Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, PA 15251

The Town shall transmit copies of each check to the persons specified in Section XXVIII.A., below.

D. The Town may contest payment of any costs for which reimbursement is sought pursuant to paragraph XX.B. if the Town determines that EPA has made an accounting error or if the Town alleges that a cost item that is included represents costs incurred for efforts undertaken in a manner that was inconsistent with the NCP. Such objection shall be made in writing within 60 days of the receipt of the accounting and must be sent to the

United States pursuant to Section XXVIII. Any such objection shall specifically identify the contested costs and the basis for objection. In the event of an objection, the Town shall within the 60-day period remit a Town check for an amount covering any non-contested costs to the United States in the manner described in paragraph XX.C. Simultaneously, the Town shall initiate the Dispute Resolution procedures in Section XIX. If EPA prevails in the dispute, within fifteen days of the resolution of the dispute, the Town shall remit payment of all costs for which reimbursement was sought by EPA pursuant to paragraph XX.B (with accrued interest) to the United States in the manner described in paragraph XX.C.

E. In the event that the payments required by paragraph XX.A., XX.B. or XX.D. are not timely made, the Town shall pay interest on the unpaid balance in accordance with the terms of Section 107(a) of CERCLA. Payments made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Town's failure to make timely payments under this Section.

## XXI.

### STIPULATED PENALTIES

A. For each day or part thereof that the Town fails to comply with any requirement of this Consent Decree (including, but not limited to, any time limit set forth in or established pursuant to this Consent Decree and any requirement set forth in

an EPA-approved plan or schedule prepared pursuant to this Consent Decree), the Town shall pay to the Fund for each instance of noncompliance stipulated penalties in the amounts set forth below, unless such noncompliance is excused under the terms of Section XVIII, above. Such penalties shall be due and payable within 60 days of the Town's receipt from EPA of a notice of noncompliance describing the noncompliance and indicating the amount of penalties due. Such sums shall be paid to the Fund and shall be remitted in the manner specified in Section XX.C., above.

B. Stipulated penalties shall accrue for failure by the Town to comply with any requirement of this Consent Decree, as follows:

<u>Period of Noncompliance</u>		<u>Penalty per violation per day</u>
1st through 10th day	-	\$ 750
11th through 20th day	-	\$1500
21st through 30th day	-	\$2500
31st day and beyond	-	\$4000

All penalties shall begin to accrue on the first day of failure to achieve compliance and shall continue to accrue through the final day of correction of the noncompliance. Payment of penalties shall not alter in any way the Town's obligation to comply with the requirements of this Consent Decree.

C. The Town may dispute EPA's right to the stated amount of stipulated penalties by invoking the dispute resolution

procedures under Section XIX hereof. Penalties shall accrue but need not be paid during the dispute resolution period. If a disputed matter is submitted to the District Court, the period of dispute shall end upon the rendering of a decision by the District Court regardless of whether any party appeals such decision. If the Town fails to prevail upon resolution, all penalties which accrued prior to and during the period of dispute shall be due within ten days of the rendering of the District Court's decision. If the Town prevails upon resolution, no penalties shall be paid.

D. The Town shall pay interest on the unpaid balance, which shall begin to accrue at the end of each 30-day late period in accordance with the terms of Section 107(a) of CERCLA. The payments referred to in this paragraph shall be made in the manner described in paragraph XX.C.

E. Nothing in this section shall be construed as in any way limiting the right of the United States to seek any additional remedies, sanctions or penalties available by virtue of the Town's failure to comply with the requirements of this Consent Decree, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA; PROVIDED THAT, the Town's total penalty exposure for its first violation shall be limited to \$25,000 per day, and shall be limited to \$75,000 per day for second or subsequent violations of this Consent Decree.

## XXII.

COVENANT NOT TO SUE

A. In consideration of actions which will be performed and payments which will be made by the Town under the terms of the Consent Decree, and except as otherwise specifically provided in this Consent Decree, the United States covenants not to sue the Town for Covered Matters. For purposes of this section, "Covered Matters" means any and all civil claims available to the United States under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, for the performance or funding of the Work required under this Consent Decree and for the reimbursement of the costs specified in Section XX, above. This covenant not to sue shall take effect upon EPA's issuance of a Certification of Completion in accordance with Section XXXIV, below, except that as to those actions that the Town is required, under this Consent Decree, to perform after EPA's issuance of a Certification of Completion, this covenant not to sue shall take effect upon the Town's satisfactory performance of those activities.

B. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified to be Covered Matters. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Town with respect to all other matters. In addition, the following are specifically identified as matters that are not "Covered Matters":

- (1) Liability arising from hazardous substances removed from the Site;
- (2) Damages for injury to natural resources resulting from the release of hazardous substances at or from the Site;
- (3) Claims based on a failure by the Town to meet the requirements of this Consent Decree, including, but not limited to, claims for injunctive relief or claims for civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. §9622(1);
- (4) Liability for violations of Federal or State law which occur during implementation of the Remedial Action;
- (5) Liability for response actions other than those that shall be specifically authorized by the OU1 ROD, including, but not limited to, liability for any further response actions EPA deems necessary after conducting the periodic reviews referred to in Section VIII, above;
- (6) Liability for all response costs incurred by the United States with respect to the Site, other than those response costs which are reimbursed pursuant to Section XX, above.
- (7) Liability arising from past, present or future disposal, release or threat of release of waste



materials outside of the Site and not attributable to the Site;

(8) Any matter as to which the United States is owed indemnification under Section XXV.A. hereof; and

(9) Criminal Liability.

C. Notwithstanding any other provision in this Consent Decree, the United States reserves the right to institute proceedings in this action or to issue an order or to commence a new action: (1) seeking to compel the Town to perform additional response work at the Site (or at any other area affected by a release or threat of release of hazardous substances at or from the Site), regardless of whether the additional response work is within the scope of the Work required under this Consent Decree or the OUI ROD, or (2) seeking reimbursement of the United States' response costs, if:

a. For proceedings prior to EPA Certification of Completion of the Remedial Action,

- (i) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or
- (ii) information is received, in whole or in part, after the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment; or

b. for proceedings subsequent to EPA Certification of Completion of the Remedial Action,

- (i) conditions at the Site, previously unknown to the United States, are discovered after the Certification of Completion by EPA, or
- (ii) information is received, in whole or in part, after the Certification of Completion by EPA, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

D. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in subparagraph A, above, shall not relieve the Town of its obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the requirements of the OU1 ROD, which shall be incorporated herein, and the United States reserves its right to take response actions at the Site in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: 1) resulting from such a breach; 2) relating to any portion of the Work funded or performed by the United States; or 3) incurred by the United States as a result of having to take administrative action or to seek judicial assistance to remedy conditions at the Site.

E. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any

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claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site. The United States expressly reserves the right to sue or issue orders to any person or entity other than the Town, in connection with the Site.

XXIII.

NATURAL RESOURCES DAMAGES

This Consent Decree shall not be construed to affect in any way any claims that the United States may have against the Town for any liability for damages to, destruction of, or loss of natural resources in connection with or arising from the Site, and nothing in this Consent Decree shall be construed as a release or covenant not to sue the Town for any claims arising from damages to, destruction of, or loss of natural resources, or as the agreement of any Federal natural resource Trustee to covenant not to sue the Town pursuant to Section 122(j)(2) of CERCLA, 42 U.S.C. §9622(j)(2).

XXIV.

CONTRIBUTION PROTECTION

The Town may seek contribution from any other person who is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for Response Costs incurred in relation to the Site, provided that the person has not resolved its liability to

the United States in a judicially-approved settlement concerning the response action, pursuant to Section 113(f) of CERCLA, 42 U.S.C. §9613(f). Upon EPA's issuance of a Certification of Completion pursuant to Section XXXIV, below, the Town will have resolved its liability to the United States for the performance of the activities required by the OUI ROD, this Consent Decree and the payment of the costs specified in Section XX, above, and pursuant to Section 113(f) of CERCLA, shall not be liable for claims for contribution regarding such matters; provided, that as to the particular actions that the Town is required, under this Consent Decree, to perform after EPA's issuance of a Certification of Completion, the Town's liability to the United States for the performance of those actions will be deemed resolved, for purposes of Section 113(f) of CERCLA, upon the Town's satisfactory performance of those actions. The rights that the Town has, after resolving its liability to the United States in accordance with the preceding sentence, against any person who has not resolved its liability to the United States shall be subordinate to the rights of the United States. The Town shall notify EPA 60 days prior to filing an action for contribution against any other party.

XXV.

OTHER CLAIMS

A. The Town agrees to indemnify, save and hold harmless EPA and its representatives from any and all claims or causes of

action arising from acts or omissions of the Town and/or its contractors, subcontractors, or any other person acting on their behalf in the performance of the Remedial Action or their failure to perform fully or to complete the Remedial Action.

B. EPA is not to be construed as a party to, and does not assume any liability for, any contract entered into by the Town in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of the Town.

C. The Town waives any claims for damages or reimbursement from the United States or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement or arrangement between the Town and any person performing Work on or with respect to the Site, including, but not limited to, claims on account of construction delays.

#### XXVI.

##### CLAIMS AGAINST THE FUND

The Town waives any rights it may have to assert any claims pursuant to Sections 106(b)(2), 111 or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, or any other provision of law, directly or indirectly, against the United States for reimbursement from the Fund of any past costs or costs incurred by the Town in performing the Work called for by this Consent Decree. Nothing in this Consent Decree shall be construed as EPA's

preauthorization of a CERCLA claim against the Fund within the meaning of 40 CFR §300.25.

## XXVII.

### INSURANCE/FINANCIAL RESPONSIBILITY

Prior to commencing any on-Site Work, the Town shall provide evidence to EPA demonstrating that the Town passes the financial test described in 40 CFR §264.147(f) corresponding to liability coverage in the amount of ten million dollars. In addition, for the duration of this Consent Decree, the Town shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing the Work on behalf of the Town in furtherance of this Consent Decree. Prior to commencement of Work under this Consent Decree, the Town shall provide to EPA certificates of such insurance.

## XXVIII.

### NOTICES

Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, service of any papers or process is necessitated by the dispute resolution provisions contained herein, or any other written communication is required, such correspondence shall be directed to the following individuals at the addresses specified below:

**A. As to the United States or EPA:**

3 copies: Chief, New York/Caribbean Compliance Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
26 Federal Plaza, Rm. 747  
New York, N.Y. 10278

Attention: Syosset Landfill Superfund Site Project  
Manager

(One copy of all required written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals):

Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
26 Federal Plaza  
New York, New York 10278

Attention: Syosset Landfill Superfund Site Attorney

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Benjamin Franklin Station  
P.O. Box 7611  
Washington, D.C. 20044

**B. As to the Town:**

1 copy: Karl J. Leupold, Commissioner  
Department of Public Works  
Town of Oyster Bay  
150 Miller Place  
Syosset, New York 11791

1 copy: Supervisor's Office  
Town of Oyster Bay  
Town Hall  
Oyster Bay, New York 11771

1 copy: John Paider, Esq.  
Office of the Town Attorney  
Town of Oyster Bay  
Town Hall  
Oyster Bay, New York 11771

C. In addition, when submitting to EPA any written communication required hereunder, the Town shall simultaneously submit two copies of that communication (unless the given document is a plan or report, in which case seven copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation  
New York State Department of Environmental Conservation  
Room 222  
50 Wolf Road  
Albany, N.Y. 12233-7010

Attention: Marsden Chen

D. Either Party may, upon written notice to the other, substitute new individuals to receive copies of documents, in lieu of the individuals listed above.

#### XXIX.

##### PUBLIC PARTICIPATION

Final approval and entry of this Consent Decree are subject to the requirements of Section 122(d)(2) of CERCLA, 42 U.S.C. §9622(d)(2), and 28 CFR §50.7.

#### XXX.

##### MODIFICATION

Material modifications or additions to the terms of this Consent Decree may only be made through written approval of all parties to this Consent Decree. Such written modifications or additions shall not be effective until approved by the Court in an order. No oral modification or addition of this Consent Decree shall be effective. Modifications that do not materially



alter the requirements of this Consent Decree may be made upon the written consent of all parties, which consent shall be filed with this Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXXI.

ADMISSIBILITY OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the parties waive any objection to the admissibility into evidence of the results of any analyses of samples collected by or for them at the Site or other analytical data gathered, generated, or evaluated pursuant to this Consent Decree, provided that the appropriate QA/QC and chain of custody requirements have been met with respect to such samples and analyses. The parties do not, however, waive any objections as to the weight to be given those results or data.

XXXII.

CONTINUING JURISDICTION

The Court retains jurisdiction over both the subject matter of this Consent Decree and the Town for the duration of the performance of the terms and provisions of this Consent Decree for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe,

implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree, to resolve any dispute among the Parties with respect to the terms, meaning or application of this Consent Decree, or to grant any further relief as the public interest and the equities of the case may require.

XXXIII.

COMMUNITY RELATIONS

The Town shall cooperate with EPA in providing information relating to the Work to the public. As requested by EPA, the Town shall participate in the preparation of all appropriate information disseminated to the public and, to the extent possible, in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XXXIV.

EFFECTIVE AND TERMINATION DATES

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. Except as stated otherwise in Section XXII.A., above, the Covenant Not to Sue provided by Section XXII shall become effective upon EPA's issuance of a Certification of Completion according to the following:

- 1) Following receipt of the Draft OUI Remedial Action Report required by Section VI.L., above, EPA shall review such Report and any supporting documentation.

EPA shall issue a Certification of Completion upon its determination that the Town has satisfactorily completed the Remedial Action (apart from the activities referred to in paragraph (2) of this subsection), including any EPA-authorized corrective measures to the Remedial Action, and has achieved all of the standards of performance required under this Consent Decree. After submittal of the aforementioned Draft OUI Remedial Action Report, but prior to the issuance of any Certification of Completion, EPA may undertake a review of the Remedial Action under Section VIII. The Certification shall not be issued if EPA determines at that time that further response action is necessary at the Site.

2) Certification of Completion of the Remedial Action does not in any way affect the Town's remaining obligations under the Consent Decree, including operation and maintenance, monitoring, record retention, payment of penalties, and the reimbursement of those costs specified in Section XX.B., above, which are incurred after the Certification of Completion is issued by EPA.

## XXXV.

FUTURE PROCEEDINGS

In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, to the extent the institution of such proceeding is not prohibited by the Covenant Not To Sue above, the Town shall not assert that the United States is in any way precluded or barred from instituting such an action by the principles of res judicata, waiver or rules against claim splitting, or otherwise based upon any contention that claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case. In addition, the Town waives the right to contest the validity or terms of this Consent Decree.

## XXXVI.

ENTRY OF THIS CONSENT DECREE

The Town consents to the entry of this Consent Decree without further notice.

## XXXVII.

SECTION HEADINGS

The section headings set forth in this Consent Decree are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

## XXXVIII.

SERVICE OF PROCESS

The Town shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of the Town with respect to all matters arising under or relating to this Consent Decree. The Town hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this Court.

## XXXIX.

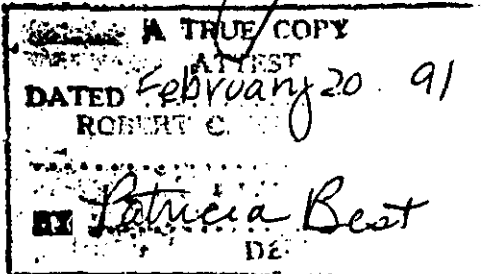
NEW YORK STATE ENVIRONMENTAL QUALITY BOND ACT

The Town as a potential applicant for funds under the EQBA has been advised of the requirements of the EQBA which are in addition to any and all requirements of this Consent Decree. Performance of the terms of this Consent Decree by the Town is not conditioned on the receipt of any State funds or reimbursement. In addition, performance is not excused by the lack of any State funds or reimbursement or by any delay in the processing of any applications for the same. In the event of a disagreement between EPA and NYSDEC technical personnel with respect to the appropriateness of any Work undertaken under this Consent Decree, such that the Town's eligibility to participate in or receive reimbursement from Title 3 EQBA monies is in jeopardy,

the Town may request EPA to extend any deadline under this Consent Decree for a reasonable period of time in order to provide an opportunity for the disagreement to be resolved.

APPROVED and ENTERED this 20<sup>th</sup> day of February, 1991.

  
UNITED STATES DISTRICT JUDGE



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. the Town of Oyster Bay, relating to the Syosset Landfill Superfund Site.

FOR THE UNITED STATES:

\_\_\_\_\_  
DATE

*[Signature]*  
\_\_\_\_\_  
RICHARD B. STEWART  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
DATE

*[Signature]*  
\_\_\_\_\_  
CYNTHIA HUBER  
Trial Attorney  
Environment and Natural  
Resources Division  
U.S. Department of Justice

ANDREW J. MALONEY  
United States Attorney  
Eastern District of New York

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
Assistant United States Attorney  
Eastern District of New York

\_\_\_\_\_  
DATE

*[Signature]*  
\_\_\_\_\_  
CONSTANTINE SIDAMON-ERISTOFF  
Regional Administrator  
U.S. Environmental Protection  
Agency  
Region II

FOR THE TOWN OF OYSTER BAY:

Sept 25, 1990  
DATE

  
By: ANGELO A. DELIGATTI  
Supervisor

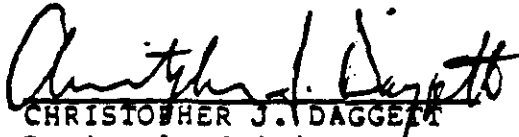
The following individuals are authorized to accept service of process by mail on behalf of the Town of Oyster Bay with respect to all matters arising under or relating to this Consent Decree:

John A. Paider, Chief Deputy  
Office of the Town Attorney  
Town Hall  
54 Audrey Avenue  
Oyster Bay, New York 11771

and/or the Town Attorney, located at the same address.



U.S. ENVIRONMENTAL PROTECTION AGENCY



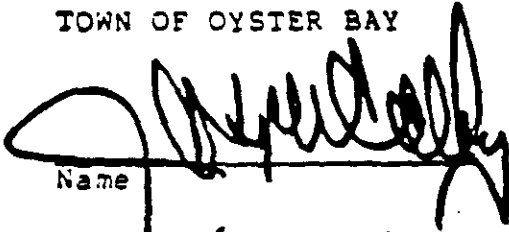
CHRISTOPHER J. DAGGETT  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

June 19, 1986  
Date

CONSENT

Respondent has had an opportunity to confer with EPA and to state any objections it may have had with respect to the contents of this Order. Respondent hereby consents to the issuance of this Order and to its terms.

TOWN OF OYSTER BAY

  
Name  
  
Supervisor  
Title

May 20, 1986  
Date